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San Francisco, California 94103
(415) 864-5600

Attorney for Defendant
EDMUND JEW

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA

Plaintiff,

v.

EDMUND JEW,

Defendant.

No. CR 07-0705 SI

**DEFENDANT'S REPLY TO
GOVERNMENT'S OPPOSITION TO
DEFENDANT JEW'S MOTION FOR
REQUEST OF EVIDENTIARY HEARING**

Date: March 21, 2008

Time: 11:00 a.m.

Ctrm: The Hon. Judge Susan Illston

Defendant Edmund Jew filed the present motion based on the information available to him at the time. Some of this information will be discussed below; all of it is discussed in the initial motion.

Counsel for Jew was aware that under the facts known at the time of the filing and the existing case law, there was not sufficient grounds to demonstrate or allege actual, misconduct by the government and thus not sufficient grounds to have the case dismissed. However, counsel in good faith did believe that serious issues of misconduct were raised regarding the activities of prior counsel Steven Gruel, Senator Leland Yee, and others, and , that if these actions were known to the government at the time Gruel represented Defendant Jew, then this would be governmental misconduct as defined in the case law which could lead to dismissal or other

1 sanctions.

2 The government has now answered the two primary questions raised by Jew in his motion
3 that could have led to a finding of governmental misconduct: (1) the government did not know or
4 believe that Steven Gruel and Senator Leland Yee had any attorney-client relationship or other
5 type of close relationship prior to Gruel representing Jew; and (2) the government did not
6 consider Senator Yee an important witness nor did it call him as a witness at grand jury
7 proceedings.

8 Defendant still believes strongly that the actions of former counsel Steven Gruel in
9 connection with his relationship with Senator Leland Yee and others violated attorney ethical
10 duties, and that Senator Leland Yee acted to set up Defendant Jew and possibly fabricate
11 evidence against him out of plicital and vindictive motivations. Defendant Jew does not accept
12 as accurate or truthful the Declaration of Senator Leland Yee filed with the government's
13 opposition. Senator Leland Yee's statements in his declaration that he had to go to an old
14 acquaintance and former Steven Gruel because he "did not know how or whom to contact at the
15 FBI" defies credibility for someone who has been involved in government and politics for the
16 length of time that Senator Leland Yee has so been involved, and undercuts his credibility on all
17 issues.

18 However, the defense agrees that no governmental attorney or agents were involved in
19 any of these acts or had any knowledge of them and therefore no governmental misconduct
20 occurred; governmental misconduct cannot be based on third party misconduct but only on
21 governmental action. The present motion is no longer the proper forum to investigate and litigate
22 the actions of Attorney Steven Gruel and Senator Leland Yee and/or others. By stating that there
23 is no evidence of misconduct by the government in no way states or implies that there was, or is,
24 no misconduct by Attorney Steven Gruel, Senator Leland Yee, or others.

25 Further, the Defendant does not agree with the accuracy of the government's statement of
26 the case based on the facts alleged in the government's opposition. Again, this Reply is not the
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1 proper pleading to address these differences.

2 Finally, it is important for this Court to understand that if the government had simply
3 responded to the numerous attempts of counsel to gain the information which is now stated in
4 their opposition, this motion would not have been filed or would have been withdrawn prior to
5 the government's opposition.

6 On February 14, 2008, defense counsel forwarded to the government through Assistant
7 U.S. Attorney Michael Li-Ming Wang a letter with a draft of the present motion. The letter is
8 attached hereto as Exhibit A. Counsel requests that the government advise if there are errors or
9 omissions in the factual analysis of the motion. Further, counsel makes clear that he is not
10 making accusations of misconduct against the government.

11 February 14th was a Thursday; when counsel did not hear from the U.S. Attorney's Office,
12 defense counsel left a voice mail message for AUSA Michael Li-Ming Wang and co-counsel to
13 contact defense counsel because the motion had to be filed on the next working day, which was
14 Tuesday, February 19th (Monday, February 18th, was a court holiday).

15 No contact was made by the government prior to the filing date of February 19th other
16 than a voice mail message stating that Mr. Wang would respond by letter. Since no letter arrived,
17 counsel filed the present motion.

18 The government wrote a letter to counsel dated February 15, 2008. The letter did not
19 reach defense counsel by facsimile or mail on February 15; it only reached defense counsel when
20 he called on February 21, 2008 to see why he had not heard from the U.S. Attorney's Office.

21 In relevant part and attached hereto as Exhibit B¹, the government alleges that defense
22 counsel appears to be acting in bad faith, and that counsel should consider whether the motion
23 should be filed. Nowhere in the letter does the U.S. Attorney respond to the questions of the
24 existence of any particular factual misstatements or omissions as requested by defense counsel.

25
26 ¹ Exhibit B and Exhibit C are being redacted because some of this letter is irrelevant to
27 the present motion and deals with privileged issues.

1 When defense counsel finally received the letter from the government, defense counsel
2 responded by facsimile on February 25, 2008 (attached hereto as Exhibit C). Counsel stated in
3 clear language that the defense would withdraw their motion, and actually had been willing to not
4 file it at all, if the government responded to the following:

5 (1) Was Senator Leland Yee called to testify at the grand jury?

6 (2) Was the government aware of the prior attorney-client relationship between Steven
7 Gruel and Senator Leland Yee?

8 Defense counsel further stated "if your answer is 'no' to both of these questions, I am
9 prepared to withdraw the motion. I would be withdrawing it not because of your implications
10 that I had done something inappropriate without any good faith belief; nor would I withdraw it
11 because I did not believe the allegations involving Gruel and Yee as laid out in my motion. I
12 would be withdrawing the motion because you had shown me that there was no governmental
13 knowledge or involvement from which one can infer bad faith discussed in the cases dealing with
14 this type of issue. Again, I had hoped to work with you on this prior to the filing of the motion
15 but that simply did not seem possible given the problem with the late delivery of your letter."

16 The government responded on February 28, 2008 by facsimile transmission (a copy of the
17 letter is attached hereto as Exhibit D). Rather than answering defense counsel's questions, the
18 government simply states that because they had already prepared their opposition and because the
19 matter had been "publicly aired insinuating government misconduct", the government believed
20 their opposition should be filed.

21 Thus, the present motion is before the Court. Interestingly, the government, in it's
22 opposition, acknowledges that there was no insinuation or statement of governmental misconduct
23 by the defense and does not allege bad faith by defense counsel in the filing of the present
24 motion, both of which are raised in the U.S. Attorney's letters (Exhibit B and D) and are
25 provided as reasons why the government needed to file it's response or not provide the
26 information requested by the defense which would have led to the defense not filing or
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1 withdrawing this motion.

2 In their response to the motion, the government then answers the questions raised by
3 counsel – they did not know of any prior attorney-client relationship between Steven Gruel and
4 Senator Leland Yee and Senator Leland Yee was not called to testify at the grand jury. Had the
5 government simply responded to these questions and contacted defense counsel when defense
6 counsel asked them questions about these matters, this motion would not have been filed.

7
8 Dated: March 13, 2008

s/Stuart Hanlon
CSBN: 66104
Attorney for Defendant
EDMUND JEW
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EXHIBIT A

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LAW
OFFICES OF | STUART HANLON

February 14, 2008

VIA FACSIMILE
(415) 436-7234

Michael Li-Ming Wang
Assistant U.S. Attorney
Office of The U.S. Attorney
450 Golden Gate Avenue, 11th Floor
San Francisco, CA 94102

Re: *United States v. Edmund Jew, Case No. 3:07-CR-705 EDL*


Dear Michael:

Enclosed is a draft motion that I intend to file next week. Its content, and request for an evidentiary hearing, is self evident. Given the state of the evidence as I see it, I feel there is little choice to file it to protect Mr. Jew's rights. At the same time, I will not make accusations that are not supported by the present state of the evidence. I feel the present motion is an appropriate balance.

I am sending it to you to see if there are gross omissions or errors in my factual analysis that you can correct prior to filing. I want to be very careful to not misstate facts. I am not extending the same offer to review to Mr. Gruel or Mr. Yee.

Please get back to me as soon as possible as this motion must be filed with the court on Tuesday. Monday is a holiday but I am available to meet or talk. I remain open to attempting to settle this case; I sent you a guideline review earlier this week and have not yet heard back from you on it.

Sincerely,



STUART HANLON

cc: Tracy Brown

STUART HANLON
Attorney At Law

SARA RIEF
Attorney At Law

DOLORES MICHELSEN
Office Administrator

EXHIBIT B



U.S. Department of Justice

United States Attorney
Northern District of California

Michael Li-Ming Wang
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102

Office: (415) 436-6767
Fax: (415) 436-7234

February 15, 2008

BY FACSIMILE (415-865-0376) AND FIRST-CLASS MAIL

Stuart Hanlon, Esq.
Law Offices of Stuart Hanlon
179 11th Street, 2d Floor
San Francisco, CA 94103

Re: United States v. Edmund Jew, CR 07-0705 SI

Dear Mr. Hanlon:

This is in response to [REDACTED]
[REDACTED] your letter of February 14, 2008,
enclosing a draft motion to dismiss.

[REDACTED]

[REDACTED]

Stuart Hanlon, Esq.
February 15, 2008
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Response to Letter of February 14, 2008

I was surprised by your draft motion, particularly its insinuation of government misconduct. At our face-to-face meeting of January 16, 2008, as well as in subsequent conversations, you repeatedly expressed that the government had handled the potential conflict with Mr. Gruel in a reasonable and appropriate manner. You also seemed to acknowledge that the absence of misconduct by the government might leave you with no legal grounds to secure dismissal as a remedy for any putative conflict. It now appears that you are raising the specter of misconduct solely to avail your client of a legal remedy in the criminal case, despite lacking any good-faith basis to believe that any misconduct occurred. If this is true, then I think it is appropriate to ask you, as a fellow officer of the Court, to reconsider your filing of this motion.

Stuart Hanlon, Esq.
February 15, 2008
Page 3

If you decide you wish to persist in filing this motion,
then we will reserve our factual and legal analysis for our
opposition brief.

Yours sincerely,

JOSEPH P. RUSSONIELLO
United States Attorney

By:

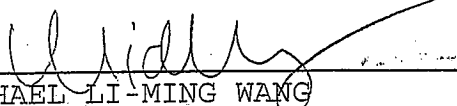

MICHAEL LI-MING WANG
Assistant United States Attorney

EXHIBIT C

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LAW
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February 25, 2008

✓ VIA FACSIMILE & FIRST CLASS MAIL

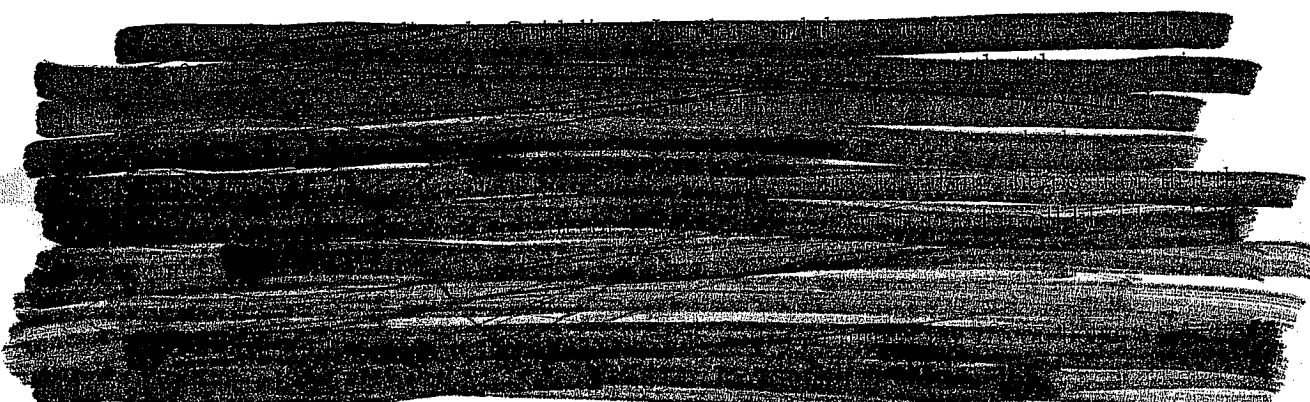
(415) 436-7234

Michael Li-Ming Wang
Assistant U.S. Attorney
Office of The U.S. Attorney
450 Golden Gate Avenue, 11th Floor
San Francisco, CA 94102

Re: *United States v. Edmund Jew, Case No. 3:07-CR-705 EDL*

Dear Michael:

I received your letter dated February 15, 2008 late in the day on February 21, 2008 by facsimile. I do not know why I did not receive it earlier and the copy that was mailed never arrived.



Regarding my motion, it was filed because it was due on February 19th. I originally sent you the draft on February 14th with a cover letter so that we could discuss it and you could inform me of matters which would lead me to not file the motion. When I did not hear from you, I had no option but to file the motion because it was due.

STUART HANLON
Attorney At Law

SARA RIEF
Attorney At Law

DOLORES MICHELSEN
Office Administrator

Michael Li-Ming Wang
February 25, 2008
Page 2

Via Facsimile & First Class Mail

I find it somewhat disturbing that you believe that I am raising an issue when I have no good faith belief in it. This is hardly the case and it is for this very reason that I forwarded a draft of my motion in the hopes of discussing it with you.

The issues that I wanted to discuss are issues that would determine whether or not the government was aware of certain factors in this case prior to getting an Indictment. These factors are as follows:

- 1) Was Leland Yee called to the grand jury as a witness?
- 2) Did your office or the agents involved at any time know of any prior attorney-client relationship between Mr. Yee and Mr. Gruel?

If your answer is no to both of these questions, then I am prepared to withdraw the motion. I would be withdrawing it not because of your implication that I had done something inappropriate or without any good faith belief; nor would I withdraw it because I did not believe the allegations involving Gruel and Yee are as they are laid out in my motion.

I would be withdrawing the motion because you had shown me that there was no governmental knowledge or involvement from which one could infer bad faith as discussed with cases dealing with these types of issues.

Again, I had hoped to work with you on this prior to filing the motion but that simply did not seem possible given the problem with the late delivery of your letter.

I am always open to discussing matters with you. I believe it is important for opposing counsel to have discussions that are informal and productive as we initially did in this case. Please feel free to contact me. If you could please answer my questions prior to February 29th because I will be leaving town for 1 week and unavailable. If I am going to withdraw the motion, I would like to do so before I leave.

Thank you.

Sincerely,



STUART HANLON

EXHIBIT D



U.S. Department of Justice

United States Attorney
Northern District of California

Michael Li-Ming Wang
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102

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Fax: (415) 436-7234

February 28, 2008

BY FACSIMILE (415-865-0376) AND FIRST-CLASS MAIL

Stuart Hanlon, Esq.
Law Offices of Stuart Hanlon
179 11th Street, 2d Floor
San Francisco, CA 94103

Re: United States v. Edmund Jew, CR 07-0705 SI

Dear Mr. Hanlon:

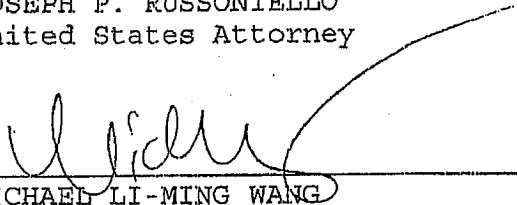
This is in response to your letter of February 25, 2008, regarding the motion that you filed on February 19, 2008. When we received the letter, we had already completed the bulk of our work on our opposition brief. Because of that work, and inasmuch as you have now publicly aired insinuations of government misconduct that we believe should be addressed, we will go ahead and file our opposition brief on schedule. If, after reviewing our opposition brief you wish to withdraw your motion, we would certainly acquiesce to your doing so.

AUSA Brown will write separately to you regarding our position on the Sentencing Guidelines as they pertain to your client.

Yours sincerely,

JOSEPH P. RUSSONIELLO
United States Attorney

By:


MICHAEL LI-MING WANG
Assistant United States Attorney